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February 7, 2023

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

CASE# 2:21-cv-05400

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JONATAN BARAHONA and HECTOR HERNANDEZ,

Plaintiffs,

-against-

PARADISE TREE SERVICE & LANDSCAPE CORP. and

WILLIAM NIETO,

Defendants.

-----x

1757 Veterans Highway

Islandia, New York

February 7, 2023

11:00 a.m.

Deposition of the Defendant

WILLIAM NIETO (Present) pursuant to Rule 30 of
the Federal Rules of Civil Procedure, before
Robert S. Barletta, a Notary Public of the State
of New York.

(1) **Nieto**

(2) Q. Yesterday, you attended the depositions
(3) of Jonatan Barahona and Hector Hernandez; correct?

(4) **A. Correct.**

(5) Q. Did you recognize them?

(6) **A. Yes.**

(7) Q. Who are they?

(8) **A. Jonatan Barahona and Hector Hernandez.**

(9) Q. How do you know them?

(10) **A. I know Jonatan for a few years. In 2017**
(11) **he came to work some days with me and also I know**
(12) **Hector the same way. I know him since 2019. He**
(13) **also came to work a few days.**

(14) Q. When you say they came to work with you,
(15) what do you mean?

(16) **A. Well, I have a business of landscaping**
(17) **and tree trimming. So they solicited me when I**
(18) **needed help if they could come work.**

(19) Q. What landscaping business do you have --
(20) what is the name of it?

(21) **A. The name of the company is Paradise Tree**
(22) **Service and Landscape Corp.**

(23) Q. For the purposes of this deposition when
(24) I say Paradise, I mean Paradise Tree Service and
(25) Landscape Corp.?

(1) Nieto

(2) **A. Correct.**

(3) Q. When was Paradise established?

(4) **A. Around 2007.**

(5) Q. Did you form the company?

(6) **A. Yes.**

(7) Q. Have you owned the company since it was
(8) established in approximately 2007?

(9) **A. Yes.**

(10) Q. Since Paradise was formed in 2007, have
(11) there been any other shareholders other than you
(12) in Paradise?

(13) **A. No.**

(14) Q. Do you have a title with Paradise?

(15) **A. Yes.**

(16) Q. What is that title?

(17) **A. I am the owner or president.**

(18) Q. Are you a native English speaker?

(19) **MR. INGOGLIA: Objection. Can you**
(20) **define native? What do you mean by that?**

(21) Q. What was your parents' primary language?

(22) **A. Spanish.**

(23) Q. Is Spanish your first language?

(24) **A. Yes.**

(25) Q. How long have you been speaking English?

(1) Nieto

(2) **A. Maybe about 20 years.**

(3) Q. Do you have clients that speak English?

(4) **A. Yes.**

(5) Q. Who communicates with those clients?

(6) **A. I do.**

(7) Q. Do you read and write English?

(8) **A. A little.**

(9) Q. Have you ever filled out an application
(10) for a Suffolk County home improvement license?
(11) What is called a home improvement license.

(12) **A. With the help of my ex-wife, I have to**
(13) **speak sometimes both languages.**

(14) Q. Has the business of Paradise changed
(15) since it was formed?

(16) **A. Yes.**

(17) Q. Can you please describe how?

(18) **A. Before it was known as Paradise Tree**
(19) **Service then it changed to Paradise Tree Service**
(20) **and Landscape Corp.**

(21) Q. Do you supervise employees at Paradise?

(22) **A. I am also at a job with one or two**
(23) **people.**

(24) Q. Do you supervise those workers?

(25) **A. Yes.**

(1) **Nieto**

(2) Q. Do you have any managers who work for
(3) you or supervisors who work for you?

(4) **A. No.**

(5) Q. Have you ever employed a supervisor or a
(6) manager at Paradise?

(7) **A. No.**

(8) Q. Since you formed Paradise, have you been
(9) primarily responsible for supervising employees of
(10) Paradise?

(11) **A. Yes.**

(12) Q. Since you formed Paradise, who has been
(13) responsible for making hiring decisions?

(14) **A. I have.**

(15) Q. Since you formed Paradise, who has been
(16) responsible for disciplining employees or
(17) correcting employees?

(18) **A. I have.**

(19) Q. Who at Paradise has the authority to
(20) fire an employee?

(21) **A. Me.**

(22) Q. Since you formed Paradise, has anyone
(23) other than you had the authority to fire an
(24) employee?

(25) **A. No.**

(1) **Nieto**

(2) Q. Who is responsible for paying employees
(3) of Paradise?

(4) **A. I am.**

(5) Q. Since forming Paradise, has any
(6) individual other than you been responsible for
(7) paying wages to employees?

(8) **A. No.**

(9) Q. Did you hire Jonatan Barahona?

(10) **A. Yes.**

(11) Q. Did you hire Hector Hernandez?

(12) **A. Yes.**

(13) Q. Describe for me the hiring process of
(14) Jonatan Barahona.

(15) **A. When I first met him, he came to me**
(16) **looking for work and he asked if I had one or two**
(17) **days that he could work because he was without**
(18) **work.**

(19) Q. What happened next?

(20) **A. Well, when the opportunity came and I**
(21) **had a day or two for work for him, he had given me**
(22) **his number so I could call him when that happened.**

(23) Q. Did you say anything else to Jonatan
(24) Barahona or did Jonatan Barahona say anything else
(25) to you about the work before he began working for

(1) **Nieto**

(2) Q. Did you complete an I-9 for Hector?

(3) **A. No.**

(4) Q. Did you complete an I-9 for Jonatan?

(5) **A. No.**

(6) Q. Did you furnish a hiring notice to
(7) Jonatan?

(8) **A. No.**

(9) Q. Did you furnish any hiring notice to
(10) Hector?

(11) **A. No.**

(12) Q. Was there any documents generated with
(13) regard to Hector Hernandez's employment by
(14) Paradise?

(15) **A. No.**

(16) Q. Were there any documents generated with
(17) regard to Jonatan's employment with Paradise?

(18) **A. No.**

(19) Q. Did you report their wages on your
(20) payroll tax returns?

(21) **A. No.**

(22) Q. Did you withdraw any payroll taxes or
(23) any other deductions from their pay?

(24) **A. No.**

(25) Q. Did you report the wages of Jonatan and

(1) Nieto

(2) Hector to your worker's compensation insurance
(3) carrier?

(4) **A. No.**

(5) Q. Did you make any unemployment insurance
(6) payments with regard to Hector or Jonatan?

(7) **A. No.**

(8) Q. Did you report the wages of Jonatan and
(9) Hector on your state payroll tax return?

(10) **A. No.**

(11) Q. Did you include the cash you paid to
(12) them as a deduction on your income tax return?

(13) **A. No.**

(14) Q. Where did all of the cash come from to
(15) pay Jonatan and Hector?

(16) **A. From my business account.**

(17) Q. So just so we are clear, can you be more
(18) specific how you would get the cash?

(19) **A. I would take it out from my checking**
(20) **account for my business.**

(21) Q. Can you describe what you would do?

(22) **MR. INGOGLIA: Objection. Can you be**
(23) **more specific as to what you want him to**
(24) **describe?**

(25) Q. Can you be more specific about what you

(1) Nieto

(2) **A. It was a verbal agreement we had between**
(3) **Jonatan and I.**

(4) **MR. MOSER: Read that back.**

(5) **(Whereupon, the last question and answer**
(6) **was read back by the reporter.)**

(7) Q. Did you ever keep any timesheets
(8) regarding the hours that Jason or Hector worked --
(9) I mean Jonatan?

(10) **A. I looked, but I never found any records**
(11) **because everything was verbal.**

(12) Q. Did any timesheets ever exist showing
(13) the hours for Jonatan or Hector?

(14) **A. Not that I know of.**

(15) Q. Would anyone at Paradise have more
(16) knowledge than you about whether timesheets were
(17) kept for Jonatan and Hector?

(18) **A. No, only I do.**

(19) Q. Did you ever keep any other time records
(20) or payroll records for either Jonatan or Hector?

(21) **A. Again, everything was verbal.**

(22) Q. Were there any time records or payroll
(23) records for Jonatan or Hector at any time?

(24) **A. I looked. I didn't find any.**

(25) Q. Did any time records or payroll records

(1) Nieto

(2) ever exist for Jonatan Barahona regarding his
(3) employment at Paradise?

(4) **MR. INGOGLIA: Objection. Asked and**
(5) **answered. I mean he already testified**
(6) **several times. He looked and didn't find any**
(7) **what more do you want him to say about that?**

(8) Q. Did you ever have any time records or
(9) payroll records for Jonatan Barahona?

(10) **MR. INGOGLIA: Objection. Over**
(11) **objection. He can answer the question one**
(12) **last time.**

(13) **A. No.**

(14) Q. Did you ever have any time records or
(15) payroll records for Hector?

(16) **MR. INGOGLIA: This was also asked and**
(17) **answered. Over objection, answer one last**
(18) **time.**

(19) **A. No.**

(20) Q. So what were you looking for? What were
(21) you hoping to find?

(22) **MR. INGOGLIA: Objection. Don't answer**
(23) **that. I don't know what he is talking about.**

(24) Q. What records did you actually search
(25) through?

(1) Nieto

(2) **A. Exactly.**

(3) Q. Do you know what spread of hours pay is?

(4) **A. Be more specific please.**

(5) Q. Have you ever heard of anything called
(6) spread of hours pay?

(7) **A. No.**

(8) Q. When you paid Jonatan, did you give him
(9) anything in writing explaining what he was getting
(10) and why?

(11) **A. No, he wanted cash. He knew it was for**
(12) **his day of work. He wanted it right away.**

(13) Q. In addition to cash, did you hand him
(14) anything else?

(15) **A. No, he was not interested in anything**
(16) **else except his money.**

(17) Q. Was the money in an envelope when you
(18) gave it to him?

(19) **A. No.**

(20) Q. For Hector Hernandez when you paid him,
(21) was that in an envelope or just cash?

(22) **A. Cash.**

(23) Q. Did you hand anything to Hector
(24) Hernandez when you paid him other than the cash?

(25) **A. No.**